39

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No.428/2006

APPELLANT	Jeevan Vaidya, aged about 38 years, S/o Jogendra nath Vaidya R/o Village Bheeragaon, Tahsil & P.S. Kondagaon, District Bastar
	Versus
RESPONDENT	State of Chhattisgarh through P.S. Makri, District – Bastar

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Appearance:

Shri F.S. Khare, Counsel for the appellant.

Shri Ravindra Agrawal, Panel Lawyer for the State.

ORAL JUDGMENT
(12.07.2007)

SUNIL KUMAR SINHA, J.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 27/5/2006 passed by the Fourth Additional Sessions Judge (FTC), Bastar at Jagdalpur in S.T. No.208/2005, whereby, the said Court convicted the appellant under Section 304 Part –II of IPC and sentenced him to undergo R.I. for 5 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.

The case of the prosecution is that at the relevant time, the appellant was the driver of bus No. CG 17 ZA 0108. Prior to 20.10.2002, while he was driving the said bus; a she-goat was crushed by it. On this, on 20.10.2002, the persons of concerned village had stopped the bus on the way and started demanding damages for the death of she-goat. The appellant refused it and left the place by driving the bus. On this action of the appellant, the villagers namely complainant – Tiharu Ram Markam (PW-4), deceased – Deendayal, Lakhidhar (PW-5), Somaru (PW-6), Mehtar, Ganesh, Ratiram and Sadhu etc. reached to the place of occurrence with an intention to stop the bus while its return at the down trip. When the bus came to the place of occurrence at

the down trip, they stopped the bus and started demanding damages for the death of she-goat. The allegations are that after altercation for a short time, the appellant drove the bus rashly and negligently, which caused injuries to the deceased namely Deendayal, who ultimately, succumbed to those injuries. The First Information Report was lodged under Ex.P/5, *Naksha Panchnama* was prepared under Ex.P/10, site plan was prepared under Ex.P/6 and thereafter, the body was sent for postmortem under Ex.-P/20, which was performed by Dr. R.K. Singh (PW-3), who submitted his report dated 21.10.2002-Ex.P/1. According to the said report, he had noticed one injury on the occipital lobe of the deceased, which has sustained a fracture. There was also a fracture on the right femur bone and there were marks of injuries on the right knee, elbow of the left hand as also on the eye-lids of the left eye of the deceased. The blood was oozing out from the nose. On internal examination, he found that the injury on the occipital lobe was admeasuring 5cm x 7cm x 8 cm, in which, there was a fracture and as stated above, there was a fracture of the right femur bone and both the injuries were grievous in nature. Apart from this, there were abrasions on the right hand admeasuring 3cm x 2cm x 1cm, 3cm x 2cm x 2cm and 4cm x 2cm x 2cm. He further noticed that there was an abrasion on the lower abdominal portion of the deceased admeasuring 7cm x 8cm x 5cm and there was an injury on the ankle joint of right leg admeasuring 3cm x 2cm x 4cm and the size of the injury sustained on the elbow of left hand was admeasuring 3cm x 2 cm x 1 cm. There was also an injury on the back portion of the left external pinna admeasuring 3cm x 2cm x 1cm. According to his opinion, the cause of death was excessive bleeding out of the said injuries, which were anti mortem and homicidal in nature.

It is on this evidence, after usual investigation; charge sheet was filed under Section 304 of IPC. On trial, the Sessions Court framed charges under Section 304 Part –II of IPC, to which, the appellant denied. On conclusion of the trial, the Sessions Court held the appellant guilty of the offence

punishable under Section 304 Part-II of IPC and sentenced him as aforementioned. It is against this judgment of conviction and order of sentence, the appellant has filed this appeal.

Learned counsel for the appellant submits that even on admitting the entire evidence on record, led by the prosecution, no offence under Section 304 Part –II of IPC would be made out. He prays for setting aside the judgment of conviction and order of sentence passed by the Sessions Court after holding the appellant guilty of the offence punishable under Section 304 Part-II of IPC.

On the other hand, learned counsel for the State opposes these arguments and supports the judgment of conviction and order of sentence passed by the Sessions Court.

I have heard learned counsel for the parties at length and have also perused the records of the Sessions Trial.

Shyamlal (PW-1), who claims to be an eye-witness deposed in para 2 of his evidence that after stopping the bus at a particular place, some altercation was going on between the driver (appellant) and the villagers. At that time, he went towards the rear portion of the bus and he could not see as to where Deendayal (deceased) and Somaru (PW-6) had gone and he could only see that the vehicle was driven speedily towards Khadigaon and there, he saw that Deendayal was lying on the road, therefore, in fact, he could not see as to how the deceased received injuries.

Tiharu Ram Markam (PW-4) has deposed that in fact the deceased – Deendayal was standing towards the driver's side of the vehicle, when the altercation was going on and when the driver tried to fled away by driving the vehicle, he climbed on the door of the bus and after going to some distance, when the bus was not stopped by the driver, he fell down from the bus and ultimately, received the said injuries.

According to the evidence of this witness, the deceased was dragging along with the bus in such position to some distance and even after looking to this, the bus was not stopped by the driver.

Lakhidhar (PW-5) deposed that in fact the deceased and Somaru, both were standing in front of the bus and even after seeing them, the bus was driven by the appellant. Somaru moved away from the said place, therefore, he was saved and the bus went away running over the deceased – Deendayal.

Though this witness has deposed about a case of run over, but according to the evidence of Dr. R.K. Singh (PW-3) particularly on the basis of injury sustained by the deceased, it does not appear that in fact, it was a case of run over. Therefore, the evidence of this witness, which is contrary to the medical evidence, does not appear to be true and he has not deposed the correct picture of the incident before the Sessions Court.

So far as Somaru (PW-6) is concerned, he has deposed in para 3 of his cross-examination that when the driver was trying to take the vehicle by driving it, the vehicle had dashed the deceased.

Therefore, in appreciation of all this evidence, which was led by the prosecution, it appears that Lakhidhar (PW-5) has not given a correct story as indicated above, and according to the story given by the other persons, including the opinion of the Doctor on the said injuries, specifically vide para 8 of his deposition, in which he admitted that the death was an accidental death, it does not appear that the said act was done and the death was caused with a knowledge, which is likely to cause death or to cause such bodily injuries as is likely to cause death. There is distinction between causing of death by negligence and causing a death by an act with the knowledge that it is likely to cause death, but without any such intention.

Section 304-A, which relates to causing death by negligence, provides that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both, whereas, Part II of Section 304 of IPC provides that if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause

such bodily injury as is likely to cause death, the culprit shall be punishable with an imprisonment of either description for a term which may extend to 10 years, or with fine or with both. Therefore, the requirements of Section 304-A of IPC are that the death of any person must have been caused by the accused doing any rash or negligent act. In other words, there must be proof that the rash or negligent act of accused was the proximate cause of death and there must be direct nexus with the death of a person and the rash or negligent act of the accused, whereas, in the II Part of Section 304, an act of a person must have been committed so with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death, which is clearly differentiable from the provisions of Section 304-A.

In the present case, the death has been proved to have been occurred by rash and negligent driving of the appellant, but it has not been proved that the said act was done by the appellant with the knowledge that it is likely to cause death, or to cause bodily injuries as is likely to cause death.

In view of the above discussions and the evidence led by the prosecution, it is clear that conviction of the appellant under Section 304 Part-II of IPC cannot be sustained for the act proved to have been committed by him and the act of the appellant shall make him liable for punishment under Section 304-A of IPC and I hold it accordingly.

In the result, the appeal is partly allowed.

The conviction and sentence awarded to the appellant under Section 304 Part-II of IPC are set aside, instead thereof, the appellant is convicted under Section 304-A of IPC and sentenced to undergo R.I. for 2 years.

The appeal stands finally disposed of.

Sd/-
Sunil Kumar Sinha
Judge

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